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5 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

6 THE ESTATE OF CINDY LOU HILL, by  
7 and through its personal representative,  
Joseph A. Grube; and CYNTHIA  
8 METSKER, individually,

9 Plaintiffs,

10 vs.

11 NAPHCARE, INC, an Alabama  
corporation; HANNAH GUBITZ,  
12 individually; and SPOKANE COUNTY,  
a political subdivision of the State of  
Washington,  
13

14 Defendants.

No. 2:20-cv-00410-MKD

REPLY DECLARATION OF EDWIN  
S. BUDGE IN SUPPORT OF  
PLAINTIFFS' SPOILIATION MOTION

15 EDWIN S. BUDGE, declare as follows:

16 1. I am over the age of 18, am competent to testify in this matter, and  
17 make this declaration based on my personal knowledge.

18 2. I am one of the attorneys for the plaintiffs in this matter.

19 3. Nearly ten months ago, on March 22, 2021, counsel for Spokane  
20 County produced a variety of jail surveillance videos to my office in response to  
Plaintiffs' Requests for Production. These included a myriad of camera angles and

1 views, such as views of a lobby area, elevators, a sally port area, a module area, and  
2 other angles with little or no relevance to the instant litigation. Among the videos  
3 produced on that date was a video of approximately seven hours and 26 minutes of  
4 footage showing a hallway that is different from the hallway outside Cell 2W27.  
5 This surveillance footage depicts a wide hallway with black file containers fastened  
6 to a wall on the left side of the screen, along with a curved desk area on the right  
7 side of the screen. True and correct copies of screenshots from this video are  
8 attached hereto as Exhibits A.1, B.1, C.1, D.1, and E.1. At the far end of this  
9 hallway, one can see a doorway that appears to lead to the hallway that contained  
Ms. Hill's cell. For much of the video, even that that doorway is mostly obscured.

10 4. The *relevant* hallway, however, is the hallway directly outside Cell  
11 2W27 as described in detail in Plaintiffs' December 17, 2021 Rule 37(e) Motion for  
12 Default Judgment and Other Sanctions Against Defendant Spokane County for  
13 Spoliation of Evidence and supporting materials. This video is of the hallway  
14 immediately outside cell 2W27 where Cindy Hill was confined on her last day in the  
15 jail. Of the 2W27 hallway video, Spokane County only produced two segments. One  
16 such segment, approximately 32 minutes in length, runs from approximately 9:43  
17 a.m. to 9:15 a.m. The other segment, approximately 2 and ½ hours in length, runs  
18 from approximately 4:00 p.m. to 6:30 p.m. No video from the relevant 2W27  
19 hallway has ever been produced for the approximately 6-hour-and-45-minute period  
20 between 9:15 a.m. and 4:00 p.m. when all of the alleged activity critical to this case  
took place.

1           5.     True and correct copies of screenshots from the preserved segments of  
2 2W27 Hallway Video are attached hereto as Exhibits A, B, C, D, and E. This video  
3 depicts a narrow hallway with cells on the right-hand side of the screen. One such  
4 cell contains the stenciled number “2W29” above the cell door in black letters. Two  
5 doors beyond that is Cell 2W27.

6           6.     By comparing the two videos (the 2W27 hallway video with the other  
7 video referenced above), it is easy to demonstrate that the camera view from the  
8 spoliated section (i.e., the 2W27 hallway video) is entirely different from, and vastly  
9 superior to, the view shown by the other video the County’s lawyer incorrectly  
10 claims “rectif[ies]” its destruction of evidence. In fact, as stated, the other video is  
11 from a different hallway and does not even show Cell 2W27 or any of the adjacent  
12 cells in that hallway. This is demonstrated in the series of screenshots attached  
13 hereto as Exhibits A, A.1, B, B.1, C, C.1, D, D.1, E, and E.1 created by my office  
14 from the produced video to illustrate the distinction.

15           7.     Exhibit A is a screenshot from the crucial 2W27 hallway surveillance  
16 camera at 9:10:22 a.m. This screenshot is part of the limited morning segment the  
17 County properly preserved and produced. The 9:10:22 a.m. screenshot shows that  
18 Cindy Hill has been taken in a wheelchair to Cell 2W27. The video shows Ms. Hill  
19 sitting in the wheelchair with a female officer, directly outside Cell 2W27 just  
20 before being put inside the cell. Exhibit A.1 is a screenshot from the exact same  
time, taken from the other video that the County references in its response brief. The  
screenshot from that video—recorded simultaneously with the 2W27 hallway

1 video—shows none of what can be seen in the 2W27 video. Ms. Hill not visible.  
2 Her cell is not visible. The female officer is not visible. No adjacent cells are visible.  
3 It is a different video taken of different hallway in a different location.

4 8. Exhibit B is a screenshot from the crucial 2W27 hallway surveillance  
5 camera at 4:26:46 p.m. This screenshot is part of the limited afternoon segment the  
6 County properly preserved and produced. The 4:26:46 p.m. screenshot shows a jail  
7 officer with his hands on the outside of Cell 2W27, peering in through the glass  
8 viewing window. Exhibit B.1 is a screenshot from the exact same time, taken from  
9 the other video referenced by the County in its response brief. The screenshot from  
10 that video—again, recorded simultaneously with the hallway video in question—  
11 clearly shows that it is from a different part of the jail in a different hallway. The  
12 officer is not visible. Ms. Hill’s cell is not visible. No adjacent cells are visible. It is  
13 a different video taken of a different hallway in a different location.

14 9. Exhibit C is a screenshot from the crucial 2W27 hallway surveillance  
15 camera at 4:28:27 p.m. This screenshot is part of the limited afternoon segment the  
16 County properly preserved and produced. The 4:28:27 p.m. screenshot shows a jail  
17 officer with his right hand at the food slot on the outside of Cell 2W27. Exhibit C.1  
18 is a screenshot from the exact same time, taken from the other video referenced by  
19 the County in its response brief. The screenshot from that video—again, recorded  
20 simultaneously with the hallway video in question—clearly shows that it is from a  
different part of the jail in a different hallway. The officer is not visible. Ms. Hill’s  
cell is not visible. No adjacent cells are visible. It is a different video taken of a  
different hallway in a different location.

1           10. Exhibit D is a screenshot from the crucial 2W27 hallway surveillance  
2 camera at 5:25:19 p.m. This screenshot is part of the limited evening segment the  
3 County properly preserved and produced. The 5:25:19 p.m. screenshot shows a jail  
4 officer standing at the door outside of Cell 2W27 when Ms. Hill was first found  
5 unresponsive inside. Exhibit D.1 is a screenshot from the exact same time, taken  
6 from the other video referenced by the County in its response brief. The screenshot  
7 from that video—again, recorded simultaneously with the hallway video in  
8 question—clearly shows that it is from a different part of the jail in a different  
9 hallway. The officer is not visible. Ms. Hill’s cell is not visible. No adjacent cells  
are visible. It is a different video taken of a different hallway in a different location.

10           11. Exhibit E is a screenshot from the crucial 2W27 hallway surveillance  
11 camera at 5:26:32 p.m. This screenshot is part of the limited evening segment the  
12 County properly preserved and produced. The 5:26:32 p.m. screenshot shows a  
13 group of people in the hallway outside of Cell 2W27 when Ms. Hill has just been  
14 dragged from her cell into the jail hallway. Exhibit E.1 is a screenshot from the  
15 exact same time, taken from the other video referenced by the County in its response  
16 brief. The screenshot from that video—again, recorded simultaneously with the  
17 hallway video in question—clearly shows that it is from a different part of the jail in  
18 a different hallway. No people are visible. Ms. Hill’s cell is not visible. It is a  
different video taken of a different hallway in a different location.

19           12. On January 4, 2022, I received a telephone call from John Justice, the  
20 attorney for Spokane County. Mr. Justice stated that his office had located  
surveillance video that had not been earlier produced in discovery. Mr. Justice stated

1 that he did not know why his office failed to produce the video, that it was an error  
2 committed by his office, and that new video would be produced later that same day.  
3 Mr. Justice sent an email shortly after the conversation, stating that he would be  
4 producing a “segment [that] was somehow not included” in earlier production “that  
5 depicts the hallway outside of 2W27 from approximately 9:30 a.m. until 5 p.m.” A  
6 true and correct copy of this email from Mr. Justice is attached hereto as Exhibit F.  
7 Later that day, the County’s lawyer did, in fact, produce jail surveillance video by  
8 providing a Dropbox link in an email. I then reviewed that video, expecting to see  
9 novel or different video from what the County had produced earlier in the litigation  
10 on March 22, 2021.

11 13. Surprisingly, however, the video produced by the County’s lawyer on  
12 January 4, 2022 turned out to be nothing other than a duplicate of video footage that  
13 the County had produced on March 22, 2021. There is nothing new or different  
14 about the video produced on January 4, 2022 compared to the video produced on  
15 March 22, 2021. It is the same video footage we’ve had for nearly ten months. And  
16 while it includes seven hours and 26 minutes of jail surveillance from a different  
17 hallway, this surveillance is *not*, as the County’s counsel now claims, “from the  
18 hallway outside cell 2W27” and it is video of a *different* hallway that appears to be  
19 in the 2-West section of the jail or its vicinity. It is not the video that is the subject of  
20 the instant motion. None of the cell doors that line the hallway outside of Cell 2W27  
can be seen in this video so it is not possible to accurately tell from it whether any  
person specifically visits Cell 2W27 at any time. While this other video it appears to  
be in the general vicinity of the relevant hallway and shows a door in the far

1 distance that appears to lead to the 2W27 hallway, it is not (unlike the video that  
2 was spoliated) video of the hallway itself.

3 14. In my declaration of December 17, 2021, I described the Rule 30(b)(6)  
4 deposition of Spokane County, through its designee, Don Hooper. The County did  
5 not permit the deposition to occur until July 21, 2021. The Rule 30(b)(6) deposition  
6 transcript was generated by the court reporter on July 27, 2021, and the County's  
7 Rule 30(b)(6) designee had 30 days after that to review and correct the transcript.  
8 Moreover, the County did not permit the deposition of the Director of Spokane  
9 County Detention Services until August 16, 2021. That transcript was generated on  
10 August 23rd, and the deponent had until 30 days after that to review and correct the  
11 transcript. Plaintiffs filed their motion less than two months after that. The motion  
12 was filed well in advance of the dispositive motions deadline set by the Court (*see*  
13 ECF 14) and nearly seven full months before trial.

14 I declare under penalty of perjury under the laws of the United States that the  
15 foregoing statements are true and correct.

16 Executed this 11th day of January, 2022, at Seattle, Washington.

17 s/ Edwin S. Budge  
18 Edwin S. Budge  
19  
20

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date stated below this document was filed with the Clerk of the Court for the United States District Court for the Eastern District of Washington, via the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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Dated this 11th day of January, 2022.

s/ Edwin S. Budge  
Edwin S. Budge